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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,114	03/11/2004	Kenneth S. Bloom	18420 USA	7090
27081	7590	08/17/2006	EXAMINER	
OWENS-ILLINOIS, INC. ONE SEAGATE, 25-LDP TOLEDO, OH 43666			HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 08/17/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/799,114	<b>Applicant(s)</b> BLOOM ET AL.	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
     4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-11-04;8-4-05</u> | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-12, drawn to closure and package comprising the closure, classified in class 215, subclass 252.
  - II. Claims 13-15, drawn to a method of making a closure, classified in class 264, subclass 328.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group II are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the closure can be formed as two separate parts, i.e., the closure cap and tamper band, then joined together outside of a mold.

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Robert Collins on April 13, 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-15 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Specification***

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "interconnecting wall portion".

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamath (US 5,320,234).

Disclosed is a tamper-indicating closure **10** that includes:

a base wall having a cylindrical skirt **12** for removably engaging a container finish,

a tamper band **24** frangibly connected to said skirt, and

a plurality of wings **28** extending inwardly from an inner surface of said tamper band for engaging a container finish,

said wings being flexibly resiliently connected to said inner surface of said band along lines that are disposed at a counterclockwise angle with respect to an axis of said skirt as viewed from inside said skirt.

The band is set forth as being 0.030 in thick. Therefore, the wings must be less than or equal to 0.030 in thick. Thus, meeting the limitation of claim 6.

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The wings are set forth in Wilde et al. (US 4,418,828), which was incorporated by reference, to be angled 30° with respect to a vertical cap axis.

9. Claims 1,3,4,5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Przytulla et al. (US 5,915,579).

Disclosed is a tamper-indicating package that includes:

a container **10** having a finish with at least one external thread segment **28** and a plurality of external ratchet teeth **36** spaced from said thread segment, and

a tamper-indicating closure **12** that includes:

a base wall having a skirt with at least one internal thread segment for engaging said external thread segment on said finish,

a tamper band **14** frangibly connected to said skirt, and

a plurality of wings **34** extending inwardly from an inner surface of said tamper band for engagement with said ratchet teeth on said finish,

said wings being resiliently flexibly connected to said inner surface of said band along lines that are disposed at a counterclockwise angle with respect to an axis of said skirt as viewed from inside said skirt.

With respect to claim 5, the wings appear to be angled 35° in figure 4.

10. Claims 1,3-5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ma (US 6,112,923).

As seen in figure 13, the wings **226** extend from an inner surface of the skirt **218** and are disposed at a counterclockwise angle with respect to an axis of the closure. The ratchet teeth of the container are seen in figure 16 to extend partially around the neck.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Przytulla.

Przytulla teaches a closure having angled projecting flexible wings on a tamper band, but is silent in the written specification regarding the preferred angle of the wings and the thickness of the wings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the wings at an angle of 30°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Doing so provides a tamper-indicating band expedient for tamper indication.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the wings of a thickness in the range of 0.024 and 0.03 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Doing so provides a tamper-indicating band arrangement expedient for manufacturing and tamper indication.

13. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma.

Ma teaches the claimed package except for the spacing of the wings being less than the angular spacing between the ratchet teeth, and preferably one-half the spacing.

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Wherein Ma indicates the design of the container in figure 16 provides tamper indication with less manufacturing consideration, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the package with the wings having one-half the angular spacing of the ratchet teeth. Doing so allows for fewer ratchet teeth to allow the same level of tamper indication and saves on manufacturing costs.

14. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma in view of Curry (US 4,548,329).

Ma teaches at column 5, lines 18-22 that the ratchet teeth can extend partially or completely around the neck, but is silent regarding spacing the ratchet teeth in diametrically opposed groups.

Curry teaches it is known to provide a container neck with two diametrically opposed groups of ratchet teeth.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of two diametrically opposed groups of ratchet teeth. Doing so provides a more symmetric arrangement of container ratchet teeth for uniform showing of tampering.

### ***Conclusion***

15. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt

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development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

17. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

18. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's



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supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). ). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
August 14, 2006



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